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### PRESIDENT, CONGRESS KILL OSHA ERGONOMICS STANDARD

In an official ceremony on March 20, President George W. Bush quashed ten years of OSHA rulemaking with the swipe of his pen, signing Congress's repeal of the ergonomics standard.

It was the first time ever Congress and the White House teamed to strike down a finalized workplace safety and health rule.

"In exchange for uncertain benefits, the ergonomics rule would have cost both large and small employers billions of dollars and presented employers with overwhelming compliance challenges," Bush said in a statement.

White House spokesman Ari Fleischer said recent economic woes made Bush's action more timely. "In this time of fragile economic circumstances, he does not want to take any action that would hurt economic growth and cost small businesses and other businesses billions of dollars," Fleischer said.

Fleischer said Bush has directed Labor Secretary Elaine Chao to find workplace safety solutions that don't hurt businesses. But no one in Washington is holding their breath for a Bush administration ergonomics proposal.

"There's a sure way to make all the injuries go away, and that's to make all the jobs go away," said Rep. Anne Northup of Kentucky, one of numerous Republicans who argued that the rules would impose prohibitive compliance costs on business. "Elections have consequences," countered Rep. Robert Menendez, D-N.J. "And today the Republican leadership starts down the road of what I believe will be a long list of repealing worker rights."



### NEW LABOR SECRETARY ADDRESSES WORK INJURIES AND ERGONOMICS

"The safety and health of America's workers is vital to our nation's overall well being and is my first priority. As Secretary of Labor, I am encouraged by the progress employers and workers alike are making in reducing workplace injuries and illnesses.

"The new data released today by the Bureau of Labor Statistics covering 1999 shows us where our efforts are succeeding and where we need to direct our focus as we move toward developing a 21st Century Workforce.

"One interesting point in the study is that as more Americans were in the workforce than ever before, the number of ergonomics-related injuries continued to decline. However, musculoskeletal injuries accounted for nearly one-third of all the injuries. This finding demonstrates the need for a solid, comprehensive approach to ergonomics. It also points to a need to address injuries before they occur, through prevention and compliance assistance, rather than just rely on reactionary methods. I am committed to joining with unions, employers, safety professionals and Congress to develop an effective strategy to further reduce these injuries. This is a serious problem. We are addressing it head-on, and we intend to find a solution that works.

"Truck drivers, laborers and nurses' aides all suffer especially high injury and illness rates with time away from their jobs. These workers -- together with their employers, families and communities -- pay a high price for the loss. Together, we must keep finding ways to reduce these rates and improve the safety, health and productivity of these workers."

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### A.D.A. UPDATE

### **Supreme Court Limits Disability Law**

The U.S. Supreme Court limited the reach of the Americans With Disabilities Act, ruling that state workers cannot file employment-discrimination lawsuits against their employers under the federal disability-rights law.

The 5-4 ruling, a further cutback of the federal government's power over the states, said Congress exceeded its authority when it let state workers file such claims under the 1990 law.

The federal law does not trump states' 11th Amendment immunity against being sued in federal courts, the justices said.

"We decide here whether employees of the state of Alabama may recover money damages by reason of the state's failure to comply with the (employment discrimination) provisions of Title 1 of the Americans With Disabilities Act. We hold that such suits are barred by the 11th Amendment," Chief Justice William H. Rehnquist wrote for the court.

The ruling in an Alabama case added to the court's series of decisions that have increasingly tipped the federal-state balance of power toward the states.

Those decisions have all featured the same 5-4 split among the justices, and that lineup was repeated in Wednesday's decision.

Joining Rehnquist were Justices Sandra Day O'Connor, Antonin Scalia, Anthony M. Kennedy and Clarence Thomas. Dissenting were Justices John Paul Stevens, David H. Souter, Ruth Bader Ginsburg and Stephen G. Breyer.

Writing for the four, Breyer said, "The court ... improperly invades a power that the Constitution assigns to Congress."

In January 2000, the justices barred state workers from suing their employers in federal court under the federal Age Discrimination in Employment Act. That ruling said the law could not override states' immunity against being sued in federal court.

The law bans job discrimination against the disabled, requiring employers to offer reasonable accommodations to disabled people who are otherwise qualified to perform a job. It also bans discrimination in the provision of government programs and services.

The law was signed by former President Bush, who filed a court brief supporting two Alabama state employees who sued the state. Bush said the ADA let disabled people "pass through once-closed doors into a bright new era of equality, independence and freedom."

The ruling reversed a federal appeals court decision that let Patricia Garrett and Milton Ash sue over alleged bias in their state jobs.

Garrett had been a University of Alabama nurse for 17 years when she took a four-month leave to undergo surgery, radiation and chemotherapy for breast cancer. When she returned, she said she was ordered to take a lower-paying job or quit.

Her lawsuit said her supervisor made negative comments about her illness. She took the lower-paying job and later retired.

Ash, a security guard for the Alabama Department of Youth Services, said his severe asthma was aggravated by the agency's refusal to enforce its no-smoking policy or repair exhaust problems on a vehicle he had to drive.

The 11th U.S. Circuit Court of Appeals ruled the two could sue under the ADA, saying the law canceled the states' constitutional immunity from being sued in federal court against their will.

The Supreme Court said the appeals court was wrong.

Rehnquist said examples offered in the case of discrimination by states ``fall far short of even suggesting the pattern of unconstitutional discrimination" to justify legislation based on the Constitution's 14th Amendment equal-protection guarantee.

"In order to authorize private individuals to recover money damages against the states, there must be a pattern of discrimination by the states ... and the remedy imposed by Congress must be congruent and proportional to the targeted violation. Those

requirements are not met here," the chief justice said. In contrast, Rehnquist wrote, Congress found a "marked pattern" of racial discrimination by states when it enacted the Voting Rights Act in 1965.

Breyer's dissent said Congress had found about 300 examples of discrimination by state governments. "Congress expressly found substantial unjustified discrimination against persons with disabilities," he said.

The case is *University of Alabama v. Garrett, 99-1240*.

## JUSTICE DEPARTMENT USES PROJECT CIVIC ACCESS TO GET A.D.A. COMPLIANCE

The Justice Department has announced agreements with five communities that will improve access to all aspects of civic life including, courthouses, libraries, polling places, police stations, and parks.

These agreements are part of the Department's Project Civic Access initiative, a wide-ranging effort to ensure that cities, towns, and villages comply with the Americans with Disabilities Act or "ADA." One aspect of the initiative includes investigators surveying villages, towns, cities, and counties across the country. Another aspect includes the distribution of two user-friendly guides to cities and towns explaining how to comply with the ADA.

"Access to civic life is a fundamental part of American society," said Assistant Attorney General Bill Lann Lee. "We call on localities to take this initiative seriously and to use these agreements as models to make their programs fully accessible to all people, including people with disabilities. These important steps should be taken even without a review by the Department."

The five settlements announced today cover public facilities in the City of Dodge City, Kansas; the Town of Elkin, North Carolina; Cambridge, Ohio; Ashland, Oregon; and Warminster Township, Pennsylvania. The Department now has secured 22 settlement agreements under the Project which entailed reviews of 55 localities and states. The Department continues to work on the remaining 33 investigations. Voluntary

settlements are expected in the majority of those cases.

On-site investigations have concluded in all 50 states, plus the District of Columbia and Puerto Rico. Local government officials across the country have indicated a willingness to make changes to comply with the ADA and have cooperated with the Department's investigations. The project began last fall.

Depending on the circumstances in each community, the agreements address specific areas where access can be improved. For instance, the agreements require certain communities to: improve access at city and town halls; police and fire stations; sheriff departments; courthouses; teen and senior activities centers; convention centers; libraries; baseball stadiums; golf course club houses; parks, pools, skating and skateboard rinks, and band shells; alter polling places or provide curbside or absentee balloting; upgrade 9-1-1 emergency services for people who are deaf, hard of hearing, or have speech impairments; install assistive listening systems in legislative chambers, courtrooms, and municipal auditoriums; and, provide delivery systems and time frames for providing auxiliary aids, including sign language interpreters and materials in Braille, large print, or on cassette tapes;

The two informational guides, "Americans with Disabilities Act: A Guide for Small Towns" and "The ADA and City Governments: Common Problems," review the ADA's requirements and offer practical examples of how to comply. They are available on the U.S. Justice Department's ADA website at www.usdoj.gov/crt/ada/adahom1.htm

or through the Department's ADA Information Line.

Title II of the ADA prohibits discrimination against qualified individuals with disabilities in the programs, services, and activities of state and local governments. Public entities must make reasonable modifications in policies that deny equal access, provide effective communication, and make their programs accessible through the removal of barriers or through alternate methods of program delivery, unless an undue burden or fundamental alteration of the program would result. ADA Update articles from the Department of Justice Press Release website.

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# Cell Phones, Dashboard Dining

Almost all Americans (91 percent) in a recent Insurance Research Council (IRC) survey of U.S. households believe that use of cellular phones while driving distracts drivers and increases the likelihood of accidents.

Eighty-nine percent of cellular phone owners agree that using cellular phones while driving distracts drivers and increases the likelihood of accidents.

Despite this belief, overall self-reported cell phone use while driving has actually increased in the last three years, largely a result of cellular phone ownership nearly doubling since 1997.

"Even though Americans believe that talking on the phone while driving can be dangerous, it continues to be an irresistible temptation for many drivers," said Elizabeth A. Sprinkel, senior vice president, who heads the IRC.

Most of the public (69 percent) favors laws to ban cellular phone use while driving, but only a third (35 percent) think it is likely that people would obey a ban. Less than half of Americans (47 percent) think that safety campaigns are likely to reduce cellular phone use while driving.

The results contained in IRC's recently released report, Public Attitude Monitor 2000, Issue 3, are based on a survey conducted by Roper Starch Worldwide.

The survey consisted of telephone interviews with 1,000 men and women 18 years old and older. Survey participants were selected to be representative of the population of the continental U.S. Interviews were conducted September 6 through 14, 2000. The sampling error is plus or minus three percentage points. The survey also addressed attitudes towards large trucks and highway safety.

## Dashboard dining cited as U.S. road safety threat

While many local governments are cracking down on cellphone users who chat behind the wheel, preliminary data from a U.S. study of distracted drivers suggested on Thursday that dashboard diners are a much greater threat.

The American Automobile Association's Foundation for Traffic Safety analyzed more than 26,145 crashes that occurred in the United States from 1995 to 1998, concluding that driver distraction played a role in about half.

Among accidents blamed on distracted drivers, nearly 20 percent involved motorists whose attention was lured away by something outside the car – such as billboards, signs, people and other traffic crashes.

But nearly 19 percent were distracted by something they were eating or drinking -- such as the North Carolina man who ran into a power pole while trying to rescue a drink that had begun to topple.

Motorists using or dialing cellphones accounted for only 1.5 percent of the distraction-related crashes, the study found. Slightly fewer, 1.4 percent, were distracted by other devices, such as global positioning systems and Internet connections.

More than 11 percent took their eyes off the road to fiddle with radios and CD players, and 9.4 percent were distracted by other occupants of their vehicles, including crying children.

The study found 1.2 percent were trying to adjust the heat or air conditioning when they crashed and an equal share were "smoking-related" -- drivers trying to light cigarettes or brush off hot ashes.

A draft report of the study was due out later this month, but preliminary data were posted on the safety foundation's Web site (www.aaafts.org/).

Insurance Research Council stories from the IRC press release website. http://www.ircweb.org



The U. S. Equal Employment Opportunity Commission (EEOC) has filed its first court action challenging genetic testing. The EEOC filed a Petition for a Preliminary Injunction against Burlington Northern Santa Fe Railroad to end genetic testing of employees who have filed claims for work-related injuries based on carpal tunnel syndrome. The EEOC alleges that the employees are not told of the genetic test, or asked to consent to it, and that at least one individual who has refused to provide a blood sample because he suspected it would be used for genetic testing has been threatened with imminent discharge if he fails to submit the sample.

"This is EEOC's first lawsuit challenging genetic testing. As science and technology advance, we must be vigilant and ensure that these new developments are not used in a manner that violate workers' rights," said EEOC Chairwoman Ida L. Castro. "Today, the Commission has shown that we will act quickly when confronted with such an egregious violation of the Americans with Disabilities Act as is presented here."

In its Petition, filed in U. S. District Court for the Northern District of Iowa, located in Sioux City, Iowa, the EEOC asks the Court to order the railroad to end its nationwide policy of requiring employees who have submitted claims of work-related carpal tunnel syndrome to provide blood samples which are then used for a genetic DNA test for Chromosome 17 deletion, which is claimed to predict some forms of carpal tunnel syndrome. EEOC also seeks to halt any disciplinary action or termination of the employee who has refused to submit a blood sample.

EEOC Commissioner Paul Steven Miller explained, "The Commission takes the position that basing employment decisions on genetic testing violates the ADA. In particular, employers may only require employees to submit to any medical examination if those examinations are job related and consistent with

business necessity. Any test which purports to predict future disabilities, whether or not it is accurate, is unlikely to be relevant to the employee's present ability to perform his or her job."

Chester V. Bailey, Director of EEOC's Milwaukee District Office, noted that the action is based on six charges of discrimination filed with the office. Four of the charges were filed by affected individuals; two were filed by officials of the Brotherhood of Maintenance of the Way Employees on behalf of all affected union members.

Bailey certified that EEOC had determined after a preliminary investigation that "the employees would suffer irreparable injury through the invasion of their most intimate privacy rights if the practice of testing is not ended."

EEOC is the federal agency responsible for enforcing the ADA, which prohibits discrimination against qualified individuals with disabilities, including prohibiting an employer from seeking disability related information not related to an employee's ability to perform his or her job. In addition, EEOC enforces Title VII of the Civil Rights Act of 1964, which prohibits discrimination on the bases of race, color, religion, origin; sex or national the Age Discrimination in Employment Act, which protects workers age 40 and older; and the Equal Pay Act which prohibits sex-based differences compensation. Further information about EEOC is available on the agency's Web site at www.eeoc.gov.

#### **OSHA COURSES ONLINE**

Courses approved by OSHA will be available for the first time on-line, through Eastern Michigan University in Ypsilanti, Michigan.

EMU's OSHA Training Institute began offering the courses in November.

"Proven online technologies enable us to provide unprecedented access for manufacturing and construction workers to improve their skills and make workplaces safer," says Ed Goldberg, Ph.D.

The EMU website is at: http://www.emuworldwide.net

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# NAS ISSUES FINDINGS ON THE "SCIENCE OF ERGONOMICS"

The findings of a much-anticipated study by the National Academy of Sciences (NAS) shows the need for ergonomics in the workplace.

The study found a clear relationship between musculoskeletal disorders (MSDs) of the lower back and upper extremities and particular jobs and working conditions-including heavy lifting, repetitive and forceful motion, and stressful work environments. The study also found that each year MSDs affect approximately one million workers and cost the country between \$45 and \$54 billion in compensation expenditures, lost wages, and decreased productivity. The study concludes that prevention measures can reduce the number of MSDs in the workplace.

According to OSHA, the study confirms that its regulation is based on sound science by verifying the agency's assertion that a relationship exits between risk factors at work and MSDs. In addition, the NAS study supports OSHA's framework for identifying and addressing ergonomic workplace hazards. The study concludes that, to be effective, "intervention programs should include employee involvement, employer commitment, and the development of integrated programs that address equipment design, work procedures, and organization characteristics."

Congress commissioned the study more than two years ago in hopes that OSHA would wait for the result before issuing its ergonomics standard. OSHA refused to bow to the pressure, however, and published its rule a full month before the NAS study was completed and released.

Despite the findings of the NAS study, opponents of the ergonomics rule assert that it still proves that OSHA's standard is scientifically shaky and should be overturned. The National Association of Manufacturers' (NAM's) pending lawsuit calls for a court review of the ergonomics standard for a number of reasons, including charges that there is inadequate medical science to support it.

"If there ever was any doubt that the rule should be overturned by Congress or the courts, this study removes it by underscoring both the lack of clarity about the exact causes of MSDs and the fact that the rule was issued before the congressionally ordered study was complete," says Jenny Krese, NAM's director of employment policy.

Specifically, NAM points to a statement in the study's findings that "the connection between the workplace and these disorders is complex because of the individual characteristics of workers-such as age, gender, and lifestyle."

But former OSHA Administrator Charles Jeffress said the study validated his agency's call for new workplace safeguards.

"This study affirms what OSHA's found in its rule making, that in fact these disorders are work-related and that ergonomics programs do make a difference," Jeffress said.

"What this study says is that the science is good, that this rule is based on good science. In fact it should be read as an encouragement to those people who have ergonomics programs and should be read as a validation of OSHA's issuing approval."

The study found that back pain made up the overwhelming share of workplace problems, along with muscle and bone disorders and wrist injuries, including carpal tunnel syndrome. It estimated that these maladies cost the country \$45 billion to \$54 billion annually in compensation, lost wages and lowered productivity.

For muscle and bone disorders the men at greatest risk were carpenters, construction laborers and operators of industrial machinery. Among women it was nurses and nursing support, domestic and commercial cleaning and janitorial work.

The report said programs can be developed to reduce these injuries, but must be tailored to specific workplaces.



Once the third leading cause of work-related death across all industries, falls have surpassed workplace homicide to become the second leading cause after motor vehicle crashes. Last year alone, some 717 workers died of injuries caused by falls from ladders, scaffolds, buildings, or other elevations. That equaled almost two deaths per day on average.

In the construction industry, falls lead all other causes of occupational death, but the risk is present in virtually every kind of workplace. It may occur in many forms, from standing on a ladder to change a lightbulb, to connecting bolts on steel girders hundreds of feet above the ground.

In a new report, the U.S. Centers for Disease Control and Prevention's (CDC) National Institute for Occupational Safety and Health (NIOSH) recommends strategic precautions to prevent fatal, work-related falls. "Worker Deaths by Falls: A Summary of Surveillance Findings and Investigative Case Reports," DHHS (NIOSH) Publication No. 2000-116, provides a practical on-site resource for assessing individual workplaces, identifying risk factors for falls, and developing effective preventive measures. It is designed to be useful for employers and workers as well as for safety professionals.

Employers should design and use comprehensive fall-protection programs to reduce the risk of serious or fatal injuries, NIOSH recommends. At a minimum, employers should:

- 1) incorporate safety in work planning,
- 2) identify all fall hazards at a work site,
- 3) conduct safety inspections regularly,
- 4) train employees in recognizing and avoiding unsafe conditions, and
- 5) provide employees with appropriate protective equipment and train them in its use.

As tools for such programs, the new report includes: Extensive recommendations for preventing falls from ladders, scaffolds, buildings, fork lifts and stationary vehicle, and trees. The recommendations reflect current government and industry standards, as well as NIOSH research findings.

All 90 case reports that NIOSH has issued from investigations of fatal job-related falls under its Fatality Assessment and Control Evaluation program. Covering a wide range of work activities, these findings and recommendations will be useful to employers and workers in identifying and reducing risks in similar situations.

"Worker Deaths by Falls: A Summary of Surveillance Findings and Investigative Case Reports" is available at no charge by calling the NIOSH toll-free information number, 1-800-35-NIOSH (1-800-356-4674). Information on other NIOSH research is available by calling the information number or by visiting NIOSH on the World Wide Web at <a href="https://www.cdc.gov/niosh">www.cdc.gov/niosh</a>. Article from the NIOSH press release website.

#### Texas Remains Only Voluntary Worker's Comp State

The Texas Supreme Court has upheld the right of Texas employers not to join the state's worker's compensation insurance system, keeping Texas as the only state that allows its employers to opt out. But state legislators are trying to change that.

A 1989 law permits Texas businesses to decide

A 1989 law permits Texas businesses to decide whether to join the workers' compensation system. Ones that do are shielded from employee lawsuits and receive system benefits, while those that opt out waive their common-law defenses.

In practice, however, businesses opt out and then have employees agree to waive their rights to sue and accept benefits the companies offer. The Supreme Court's new decision said such waivers are legal and it is up to the Texas Legislature to bar them, if it wishes.

The state Senate passed a bill by Sen. Robert Duncan, R-Lubbock, that would outlaw the waivers. The bill moved to the House, where its sponsor is Rep. Ken Brimer, R-Fort Worth, who chairs the House Business and Commerce Committee.

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# 1/3 of Eye Strain Complaints About Computer Monitors Indicate Workplace Dissatisfaction

One in three complaints of eye strain, attributed to computer monitors, is really about employee dissatisfaction with working conditions, suggests research in Occupational and Environmental Medicine magazine.

Over 200 banking employees completed three questionnaires on job stress, environmental working conditions, and levels of eye strain as a result of working with computers. Their average age was 38; 33 of them were women.

All the employees shared the same environment and work duties, and none had any history of eye problems. Eye strain included itchy, sore, or heavy eyes, and blurred or double vision during or immediately after work three or more times a week.

Job stress strongly predicted eye strain, accounting for almost a third of the complaints. Job stress included lack of social support, group conflict, low self esteem, low levels of work satisfaction, and underuse of skills. But where employees did feel supported, they were a third less likely to report eye strain.

Lighting did not seem to affect levels of eye strain, but noise and environmental tobacco smoke did.

The authors conclude that a proportion of eye strain complaints are psychological in origin, and are an expression of workplace stress rather than having any true organic cause. They suggest that stimulating an emotionally supportive environment could alleviate the effects of stress.

The Occupational and Environmental Medicine article is titled "Psychological factors and visual fatigue in working with video display terminals."

#### Study estimates 14% of drivers are uninsured

Being involved in an automobile accident with an uninsured driver is no fun. And paying extra premiums to protect yourself from uninsured drivers is no fun either.

According to a new study from the Insurance

Research Council (IRC), the chances are about 14 in 100 that, if an insured car occupant is injured in an auto accident in the U.S., an uninsured motorist caused the accident

According to the study, the problem varies widely from state to state. According to data just released (for the period of 1995 to 1997), the five states with the highest uninsured driver estimates were Colorado (32 percent), New Mexico (30 percent), South Carolina (28 percent), Alabama (25 percent), and Mississippi (25 percent). The five states with the lowest uninsured driver estimates were Maine (4 percent), North Carolina (6 percent), South Dakota (6 percent), Massachusetts (7 percent), and Wyoming (7 percent). Sixteen states and the District of Columbia had a ratio of uninsured motorists to bodily injury claim frequencies above the national average, while 34 states had a ratio below the national average.

"Despite laws in many states requiring drivers to maintain insurance, about one in seven motorists remain uninsured," says Elizabeth Sprinkel, senior vice president, who heads the IRC. "This means that responsible drivers who carry insurance must bear the burden of paying for injuries caused by drivers who carry no insurance at all."

The study, "Uninsured Motorists 2000 Edition," contains the most recent state statistics on uninsured motorist claim frequency, bodily injury claim frequency, and the ratio of uninsured motorist to bodily injury claim frequencies. IRC calculates the uninsured driver proportion using a ratio of claims made by individuals injured by uninsured drivers (uninsured motorists coverage) to claims made by individuals injured by insured drivers (bodily injury liability coverage).

IRC used claims data compiled by the National Association of Independent Insurers; Insurance Services Office Inc.; National Independent Statistical Service; Maryland Automobile Insurance Fund; Automobile Insurers Bureau of Massachusetts; Texas Department of Insurance; and South Carolina Department of Insurance to derive its findings.

For more information about the study's methodology and findings, go to http://www.ircweb.org.



#### LEGAL UPDATE

Appeals Court Says Gays Not Protected By Sexual Harassment Law

Workplace harassment of gays and lesbians because of their sexual orientation is "appalling" but does not violate federal law, a federal appeals court ruled in March. The 2-to-1 decision by a U.S. Court of Appeals panel in San Francisco has little effect in California, where state law forbids job discrimination or harassment based on sexual orientation.

But only 10 other states and the District of Columbia have such laws, and some of those offer limited remedies. Nevada, where yesterday's case arose, banned job discrimination against gays and lesbians in 1999, but victims can sue only for back pay and no other damages, said the plaintiff's lawyer in the case.

Gay rights advocates have been trying to persuade Congress to pass an anti-discrimination law for 20 years and have little hope of immediate success in light of President Bush's stated opposition. But the U.S. Supreme Court has allowed suits for same-sex harassment, in some circumstances, as a form of discrimination based on gender -- the issue in yesterday's case.

Medina Rene, a gay man who worked as a butler at the MGM Grand Hotel in Las Vegas, said his supervisor and co-workers, all of them men, subjected him to crude harassment on nearly every workday between February 1994 and February 1996.

He said they grabbed his crotch, poked him, made him look at pictures of naked men having sex, whistled and blew kisses at him and called him "sweetheart," among other things. Rene said he complained to higher-ups to no avail.

After leaving the job, Rene sued the hotel in 1997 under a section of the federal Civil Rights Act that provides damages of up to \$300,000 for employment discrimination based on sex.

A year later, the Supreme Court ruled in a separate case that the law applied to some instances of samesex harassment: if, for example, it was motivated by

sexual desire or sexual hostility, or if the harasser treated men and women differently. The San Francisco-based appeals court, which oversees federal courts in nine Western states, has also ruled that abuse of an employee for failing to fit sexual stereotypes is sex discrimination.

But in upholding a federal judge's dismissal of Rene's suit, the appellate panel said his claim that he was harassed solely because of his sexual orientation is not covered by federal law.

"The degrading and humiliating treatment Rene contends that he received from his fellow workers is appalling," said the majority opinion by Chief Judge Procter Hug. "However, this type of discrimination, based on sexual orientation, does not fall within the prohibitions" of the ban on sex discrimination.

Dissenting Judge Dorothy Nelson argued that samesex harassment amounts to sex discrimination "when the abuse is physical and sexual." The effect of the alleged attacks was "to humiliate Rene as a man," and the motives, gender or sexual orientation of his assailants should not affect his ability to sue, Nelson said.

Rene's lawyer, Richard Segerblom, said he would ask the full court for a rehearing, arguing that his client was the victim of sexual assaults that should be considered sex harassment.

Article from Department of Justice News Release website.

#### NIOSH OFFERS TRAINING VIDEO

A new 17-minute video from the National Institute for Occupational Safety and Health, "Respirators: Your TB Defense" is being offered free to trainers.

The video is intended to train health care workers about respirator use and the dangers of resurgent, sometimes drug resistant tuberculosis.

Infection control specialists, hospital administrators, respiratory program administrators and safety and health professionals are eligible to receive this free video. The video is narrated by actress Loretta Swit.

To request a copy, contact NIOSH at 800-35-NIOSH or www.cdc.gov.niosh *Article from the NIOSH press release website*.



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